UNITED
NATIONS

TD

United Nations
Conference
on Trade and
Development

Distr.
GENERAL

TD/B/COM.1/39/Add.2
13 February 2001

Original: ENGLISH

TRADE AND DEVELOPMENT BOARD
Commission on Trade in Goods and Services,
and Commodities
Fifth session
Geneva, 19-23 February 2001
Item 6 of the provisional agenda

Analysis of market access issues facing developing countries: Impact of anti-dumping and countervailing actions

Note by the UNCTAD secretariat

Addendum

The United States of America requested on 29 January 2001 that the annexed comments be circulated at the fifth session of the Commission on Trade in Goods and Services, and Commodities.

GE. *0010504 52* LS

ENG

Annex

Comments by the United States of America on the Draft Report of the UNCTAD Experts Meeting on the Impact of Anti-Dumping and Countervailing Duty Actions

January 29, 2001

The United States appreciates this opportunity to offer additional comments regarding the UNCTAD Expert Meeting on the Impact of the Anti-Dumping and Countervailing Duty Actions, held on 4-6 December 2000. General comments on the draft "Outcome Report" of that meeting were provided, in a letter from U.S. Ambassadors Rita D. Hayes and George E. Moose, to Secretary-General Ricupero, dated December 22, 2000. Those comments expressed disappointment in the failure of the draft report to reflect the diversity and balance of the comments made at the meeting on a wide variety of issues, and concern about the almost exclusive focus of the draft report on the perceptions of some participants that the existing antidumping and countervailing duty rules and practices are deficient and/or improper.

The United States continues to believe that the draft report is seriously unbalanced and poorly reflects the diversity of views expressed at the meeting. However, we have concluded that it would not be appropriate to submit detailed, paragraph-by-paragraph comments.

We do, however, have some additional general comments to provide on the issues raised in the draft report. The following paragraphs of the draft report suggest specific changes, or the need for changes, in the substantive or procedural rules governing antidumping and countervailing duty proceedings: paragraphs 5 (five per cent viability test), 6 (exclusion of sales below cost), 7 (floor on normal value), 9 (fair and symmetrical comparisons), 10 (credit cost), 11 (duty drawback), 13 (exchange rate fluctuations), 14 (exchange gains or offsets); 15 (zeroing (exceptions)), 20 (basis of negligibility), 21 (negligible import volumes), 22 (cumulation), 24 (lesser duty rule), 25 (back-to-back complaints), 27 (standing), 32 (price undertakings), 34 (specifying rule changes applicable to developing country exports), and 41 (countervailing duties).

The draft report lists the suggestions made by some participants in relation to the above topics, as if they were consensus-based recommendations. This was not the case. The suggestions noted in the draft report certainly do not reflect the views expressed by a number of other participants, representing both developing and developed countries, including the United States.

The following paragraphs of the draft report raise issues or perceived problems mentioned by some participants, without suggesting specific changes to the existing rules: paragraphs 4 (WTO dispute settlement), 8 (constructed normal value), 12 (level of trade), 16 (non-market-economy treatment); 18 (*de minimis* dumping); 19 (cyclical industries), 23 (captive production/definition of industry), 29 (questionnaires), 30 (language), and 31 (independent bodies). To the extent that there may be questions about how the existing rules

are and should be applied, there already exist fora that are specifically charged and technically equipped to take up such matters, *i.e.*, the WTO Committee on Anti-dumping Practices and its Ad Hoc Group on Implementation. The United States participates actively in both of these bodies and firmly believes that they provide the appropriate setting for substantive discussion of such issues.

Paragraphs 33 to 40 of the draft report deal with developing countries and small economies. These paragraphs discuss, on the one hand, problems encountered by exporters in developing countries or small economies when they are subject to antidumping investigations and, on the other hand, problems which developing country/small economy industries and governments may face in wishing or attempting to act against dumped imports. The United States appreciates the difficulties experienced by developing countries in implementing their own antidumping laws, as we attach considerable importance both to the right to employ such remedies and the obligation to do so in a manner consistent with the WTO's rules. Along with the WTO Secretariat and other WTO Members, we have provided guidance and assistance to a variety of countries for this purpose in the past, and we stand ready to do so in the future. In addition, the United States has provided assistance to small producers in developing countries in the context of individual antidumping and countervailing duty cases, such as by sending teams to explain questionnaires or in helping to identify less burdensome ways for parties to supply needed information.